

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARVIN MOSBY,

Petitioner,

v.

RENEE BAKER, et al.,

Respondents.

Case No. 3:14-cv-00251-MMD-WGC

ORDER

This habeas matter comes before the Court on petitioner's proper person motion for an extension of time to file an inmate account statement (dkt. no. 8) and further following upon the filing of the statement and the notice of appearance by petitioner's counsel (dkt. no. 9).

The extension motion will be granted *nunc pro tunc*. The Court understands that it was more expedient for petitioner to file the particular motion and statement in proper person, but petitioner must, of course, seek relief only through counsel moving forward. The materials submitted demonstrate petitioner's financial eligibility for appointed counsel.

It is therefore ordered that petitioner's motion for an extension of time to file an inmate account statement (dkt. no. 8) is granted *nunc pro tunc* in connection with the statement filed on July 31, 2014.

It is further ordered that the Federal Public Defender's Office is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B), with Ryan Norwood, Esq., appearing as petitioner's counsel of record.

1 It is further ordered that petitioner shall have until up to and including one
2 hundred twenty (120) days from entry of this order within which to file an amended
3 petition and/or seek other appropriate relief. Neither the foregoing deadline nor any
4 extension thereof signifies or will signify any implied finding as to the expiration of the
5 federal limitation period and/or of a basis for tolling during the time period established.
6 Petitioner at all times remains responsible for calculating the running of the federal
7 limitation period and timely asserting claims, without regard to any deadlines
8 established or extensions granted herein. That is, by setting a deadline to amend the
9 petition and/or by granting any extension thereof, the Court makes no finding or
10 representation that the petition, any amendments thereto, and/or any claims contained
11 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225,
12 1235 (9th Cir. 2013).

13 It is further ordered that respondents shall file a response to the amended
14 petition, including potentially by motion to dismiss, within sixty (60) days of service of
15 the amended petition, with any requests for relief by petitioner by motion otherwise
16 being subject to the normal briefing schedule under the local rules. Any response filed
17 shall comply with the remaining provisions below, which are entered pursuant to
18 Habeas Rule 4.

19 It is further ordered that any procedural defenses raised by respondents to the
20 counseled amended petition shall be raised together in a single consolidated motion to
21 dismiss. In other words, the Court does not wish to address any procedural defenses
22 raised herein either in *seriatum* fashion in multiple successive motions to dismiss or
23 embedded in the answer. Procedural defenses omitted from such motion to dismiss will
24 be subject to potential waiver. Respondents shall not file a response in this case that
25 consolidates their procedural defenses, if any, with their response on the merits, except
26 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit.
27 If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
28 shall do so within the single motion to dismiss, not in the answer; and (b) they shall

1 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
2 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
3 defenses, including exhaustion, shall be included with the merits in an answer. All
4 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

5 It is further ordered that, in any answer filed on the merits, respondents shall
6 specifically cite to and address the applicable state court written decision and state
7 court record materials, if any, regarding each claim within the response as to that claim.


8 It is further ordered petitioner shall have thirty (30) days from service of the
9 answer, motion to dismiss, or other response to file a reply or opposition, with any other
10 requests for relief by respondents by motion otherwise being subject to the normal
11 briefing schedule under the local rules.

12 It is further ordered that any state court record and related exhibits filed herein by
13 either petitioner or respondents shall be filed with a separate index of exhibits identifying
14 the exhibits by number. The CM/ECF attachments that are filed further shall be
15 identified by the number or numbers of the exhibits in the attachment.

16 It is further ordered that the hard copy of any exhibits filed by either counsel shall
17 be delivered — for this case — to the Reno Clerk's Office.

18 The Clerk shall send an informational hard copy of this order also to petitioner in
19 proper person at the Ely State Prison address and note the hard copy transmittal on the
20 docket in a manner consistent with the Clerk's current practice for same.

21 DATED THIS 6th day of August 2014.

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24 MIRANDA M. DU
25 UNITED STATES DISTRICT JUDGE
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